IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 21-DB of 2002

Date of Decision :- January 30, 2007

Ballu Khan ....APPELLANT

VERSUS

The State of Haryana ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present:- Mr. Swaraj Arora, Advocate
for the appellant.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 12/17.7.2001 of the learned Additional Sessions Judge, Gurgaon whereby he convicted Ballu Khan son of Sehjad Khan under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-. In default of payment of fine, to further undergo RI for one month.

The case of the prosecution is unfolded by the statement Ex.PC of Ram Chander given to Head Constable Allahbux, Incharge

Police Post Badshahpur on 4.6.1999 at 1.40 p.m. Ram Chander stated that he is residing in a house in his fields near Sohna Road, within the revenue estate of Badshahpur. On 4.6.1999 at about 8.00 a.m., he was going towards Ashok Farm. When he reached in front of Ashok Farm, he found blood stains on the kutcha santar (berm). A young man wearing pants and shirt was lying in a pool of blood away from the santar. He was writhing in pain. Blood was oozing out of his head. Injuries were visible on his head and eye. Ram Chander's son Lalit also reached the spot. Ram Chander thought that some vehicle driven rashly and negligently had hit the katcha portion of the road and thereafter, injured the unknown young man. This statement was recorded at the turning point of Dhumaspur. On the basis of this statement, FIR Ex.PG was recorded on 4.6.1999 at 2.10 p.m. and the special report reached the ACJM, Gurgaon on 5.6.1999 at 7.30 a.m.

The prosecution to prove its case brought into the witness box Ram Sajivan Singh as PW1, Dr. Rajesh Kumar Sharma as PW2, HC Jagdish Chand as PW3, Ram Chander as PW4, Dr. Arvind as PW5, ASI Charan Singh as PW6, Constable Naresh Kumar as PW7, Constable Ram Richpal as PW8, ASI Siri Niwas as PW9, Sanjiv Sharma as PW10, Rajesh Sharma as PW11, Joginder Lal as PW12, Inspector Nar Singh as PW13, Mahesh @ Pawan as PW14, SI Parmod Kumar Chauhan as PW15, HC Allahbux as PW16 and Inspector Gulshan Rai as PW17.

Learned Counsel for the appellant has argued, that Ram Sajivan Singh PW1 Trade Tax Officer, could not identify the appellant in Court. There was no name on the driving licence or on the other

documents, which were recovered by the Tax Officer. Sanjeev Sharma PW10, who held the power of attorney of the owner of the truck has stated, that after informing the police of Police Post Badshahpur, he along with Hira Singh left for Police Station Badpura District Etawa. Sanjiv Sharma had given his statement on 8.6.1999, while the occurrence took place on 4.6.1999 and Sanjiv Sharma was in the Police Station at Badshahpur at midnight on 4.6.1999, from where he left for Police Station Badpura (U.P.). Dr. Arvind PW5 has stated, that the injuries on the person of the deceased could be due to road accident. Shoes, which were recovered from the truck, belong to the appellant and not the deceased. There was no motive for the commission of the offence. The FIR is belated and the delay has not been explained. Deceased Jasbir died on 6.6.1999 and no effort was made to record his statement.

Learned Counsel for the State has argued, that truck No. DL-1G-A-0433 owned by Meenu Sharma was recovered from the possession of the appellant. Both Sanjiv Sharma PW10, who held the power of attorney of the truck and Rajesh Sharma PW11, the brother of owner of the truck i.e. his sister Meenu Sharma have stated, that appellant was the cleaner of the truck and deceased Jasbir was the driver. The wheel spanner, shoe, blood stained cabin and seat covers were recovered from the truck, which the appellant was driving. Appellant was apprehended at the Sales Tax barrier of Etawa (U.P.) by the police of Badpura. No explanation has come forward from the side of the appellant as to what he was doing with the truck at Etawa (U.P.). Ram Sajivan Singh PW1 apprehended the truck when it was going to cross the Tax barrier and

found that the documents being carried were fake. Thereafter, he handed over the appellant along with the truck which was carrying goods, to the police of Police Station Badpura.

The occurrence had taken place on the road to Sohna near the farm house of Ashok. It has come in evidence of the Investigating Officer that Sohna does not on the way to Nasik. It is clear that the appellant after murdering the driver, Jasbir was taking the truck and the goods to Nasik, so that he could sell both the truck and the goods.

We have heard the learned counsel for the parties and perused the record with their assistance.

Ram Sajivan Singh PW1 is an independent witness. He has stated, that he is Trade Tax Officer-2, Check Post, Udi, P.S. Badpura, District Etawa. He has further stated, that on 4.6.1999 he was posted at Check Post Udi. At about 6/7 a.m., a truck bearing registration No. DL-1G-A-0433 came there. It was loaded with goods. He stopped the truck and asked for bills and other papers of the goods so that a transit pass could be issued for these goods at the entry check post. The goods had been despatched from Delhi to Nasik and Duhlla in Maharashtra. Ram Sajivan Singh PW1 asked the driver (accused) of the truck to produce the transit pass. First he told that his name was Ram Singh and then he disclosed his name as Ballu Khan. He (PW1) stated, that documents produced were fake and the goods were to be taken to Kanpur. Ram Sajivan Singh PW1 stopped the truck from proceeding and after seeing the conflict between the statement made by Ram Singh @ Ballu Khan and the documents, he handed the truck and goods to the police of PS Badpura.

The bills and other documents had been kept with him. The truck with the goods and the driving licence of Jasbir were also handed over to the police.

ASI Siri Niwas PW9 has stated, that on 4.6.1999 he was posted at Police Post, Safdarjang Hospital, New Delhi. Jasbir was brought to the hospital. Jasbir died on 6.6.1999.

Sanjiv Sharma PW10 has stated, that the truck bearing No.DL-1G-A-0433 was owned by Meenu Sharma. He was the attorney of the truck. The truck was loaded with grocery on 2.6.1999 for Nasik. Deceased Jasbir was the driver and Ballu Khan was the cleaner of the truck. The truck had started for Nasik on 2.6.1999. He came to know that the truck had been intercepted at the check post at Etawa and the truck along with the goods and Ballu Khan had been handed over to the police of Police Station Badpura. This was reported to the police post at Badshahpur. Thereafter, Sanjiv Sharma PW10 along with Hira Singh left for Police Station Badpura, where they found Ballu Khan in custody of the police.

Similarly, Rajesh Sharma PW11 has stated, that the truck bearing No. DL-1G-A-0433 was registered in the name of his sister Meenu Sharma. Deceased Jasbir was driver of the truck. Appellant was the cleaner.

SI Parmod Kumar Chauhan PW15, who is a witness who has no axe to grind against the appellant has stated, that he was posted as SHO at P.S.Barhpura District Etawa. At the Sales Tax barrier, Ajitab Sales Tax Officer informed him in writing and on the basis of the writing, he wrote Daily Diary Report No.31, Ex.PN. As per the report, appellant Ballu Khan

was taken into custody along with the truck and the goods. On 5.6.1999 at about 10.45 a.m., he inspected the cabin of the truck and saw blood on the floor. A shoe was lying in the cabin, which was also stained with blood. A wheel spanner was lying, which was also stained with blood. Finding blood in this manner, he interrogated Ballu Khan and thereafter, he made a telephone call and the police of Gurgaon came there. Appellant was handed over to the police along with the driving licence of deceased Jasbir, shoe, wheel spanner and copies of Daily Diary Reports No. 13 and 14. Parmod Kumar Chauhan PW15 is a witness, who has got nothing to do with the Haryana police. His interrogation also showed the finger of suspicion was going towards the appellant, as he had recovered the shoe, wheel spanner smeared with blood, in the truck which the appellant was driving. The driving licence of Jasbir is Ex.P15.

HC Allahbux PW16 tried his best to record the statement of Jasbir, who died on 6.6.1999, but the doctors did not declare him fit to make a statement. Accused was arrested by HC Allahbux PW1 and produced before Nar Singh Inspector SHO PW13.

After going through the statements of these witnesses and the chain of events, there is no doubt in our mind that appellant is the one who committed the murder of Jasbir. The truck smeared with blood and articles were taken into possession by the Etawa (U.P.) police along with the appellant/accused.

Appellant wanted to sneak away to an unknown destination, so that he could sell the truck and the goods, but to his bad luck, he was intercepted by the Sales Tax barrier authorities, at Etawa (U.P.).

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With the above observations and discussions and the evidence on record, we do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(ARVIND KUMAR)
JUDGE

January 30, 2007
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO